

# Memorandum

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To: ENVIRONMENTAL REGION/DISTRICT MANAGERS      Date: June 30, 2003  
RIGHT OF WAY REGION/DISTRICT MANAGERS

From: BRICE D. PARIS      GARY H. WINTERS  
Chief      Chief  
Division of Right of Way      Division of Environmental Analysis

Subject: Guidelines for Funding Pre-Project Capital Costs, Including Mitigation

Effective July 1, 2003, a new process will allow eligible mitigation-related Right of Way (R/W) capital expenses to be approved, prior to completion of Project Approval (PA) and the Environmental Document (ED). This new funding flexibility will maximize environmental benefits by taking advantage of time-sensitive opportunities, volume purchase power, careful planning, and reduced capital costs.

The attached guidance was developed in cooperating with the California Transportation Commission and the Division of Project Management, Programming and Accounting. This implements a combination of the alternatives presented in the approved *October 18, 2002, Funding Pre-Project Mitigation Costs Issue Paper (attached)*. This includes mitigation development, property acquisition, and similar activities. The guidelines provide for pre-project funding of costs for individual transportation projects and multi-project "mitigation-only" efforts.

The new process uses an annual planning/programming approach to anticipate long-term needs, coordinate with CTC to budget capital, resource support costs, and to reconcile expenses to benefit transportation projects. A thorough needs assessment (what, when, where) prepared by participating Districts will provide the foundation for staffing levels in annual work plans, as well as requests for R/W capital. Headquarters will use the assessment when approving the funding of proposed solutions.

## ENVIRONMENTAL REGION/DISTRICT MANAGERS

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Costs that are potentially eligible for advancement include:

- Capital and Support Costs for Purchase of Mitigation Bank Credits;
- Capital and Support Costs for Purchase and Holding of Properties;
- Capital and Support Costs for Conservation Easements;
- Capital and Support Costs for Purchase Options and Stewardship (Endowment) Funds;
- Capital and Support Costs for Purchase and Improvement of Lands for Mitigation-Only Projects, where a separate ED and/or Banking Agreement apply.

In addition to the above activities, the following activities are being reviewed to be programmed concurrent with programming PA&ED:

- Support and Capital costs for Permit Fees;
- Right of Entry Support and Capital Costs;
- ED Support Costs, such as Records Searches;
- Utility Design Support costs and Capital Costs for Potholing;
- Early Acquisition Support and Capital Costs;
- Hardship and Protection Acquisition Support and Capital Costs;

Additional guidance and direction relating to estimating, charging practices, environmental requirements, and approval processes will be provided. If you have any questions, please contact Gregg Erickson, Chief, Office of Biological Studies and Technical Assistance at (916) 654-6296, or Bimla Rhinehart, Chief, Office of Planning and Management and Systems, within the Division of Right of Way, at (916) 654-2450.

### Attachments

- c: Brent Felker, Chief Engineer  
Brian J. Smith, Deputy Director, Planning and Modal Programs  
Carlton L. Haack, Chief, Division of Project Management, Headquarters  
Karla Sutliff, Chief, Division of Design, Headquarters  
Jim Nicholas, Chief, Division of Programming  
Stephen Maller, Deputy Director, Program Delivery  
Headquarters R/W Office Chiefs  
Headquarters Environmental Office Chiefs  
Headquarters Environmental Coordinators  
Fardad Falakfarsa, Chief, Federal Resources Office, Division of Budgets

# Guidelines For Funding Pre-Project Capital Costs, including Mitigation



Prepared by

Division of Environmental Analysis  
Division of Right of Way

June 30, 2003

*These guidelines were developed in cooperation with the California Transportation Commission, Division of Project Management, Programming, and Division of Accounting.*

This document provides guidance on the implementation of early mitigation acquisition as proposed in the approved October 18, 2002, *Funding Pre-Project Mitigation Costs* Issue Paper (attached). It provides a mechanism, beginning July 1, 2003, to approve appropriate mitigation-related Right of Way (R/W) capital expenses, prior to completion of Project Approval (PA) and the Environmental Document (ED) where such actions are compliant with environmental laws and regulations and facilitate the timely cost effective delivery of transportation projects. This includes the development of mitigation, property acquisition, and similar activities. This process will allow both pre-project funding for the mitigation of impacts caused by individual transportation projects and a mechanism to fund "mitigation-only" projects that can provide mitigation for multiple projects. It is the intent of this new funding flexibility to maximize environmental benefits by taking advantage of time-sensitive opportunities, volume purchasing power, careful planning, and reduced capital costs.

A project-specific mitigation needs assessment (what, when, where) with capital costs (acquisition, permits, endowments) for all programmed projects summarized by District will provide substantiation required to coordinate, evaluate, approve, and fund the advancement of R/W capital. The identified mitigation-related expenditures needed prior to PA&ED will be included as a line item of the annual R/W capital allocation needs for pre-project funding and mitigation-only projects during the subsequent fiscal year. Fund reserve availability by program (e.g., SHOPP) will affect opportunities to fund new mitigation-only projects.

District Environmental (ENV) staff in coordination with the District R/W staff, will develop mitigation cost estimates during the development of a preliminary environmental analysis report (PEAR) and project initiation document (PID). The R/W capital costs associated with mitigation in support of the ED will be scheduled and programmed by the Project Manager in coordination with Headquarters Programming, to be available concurrent with ED development. The amount of R/W capital programmed and available in the "0" phase will equal the PID mitigation estimate for STIP projects and the total R/W capital estimate (all R/W cost in support of the environment process) for SHOPP projects.

As part of the annual work plan process, the ENV and R/W staff of each District will prepare a District Mitigation Needs Summary (MNS) which includes the total mitigation needs for the 10-year horizon with an estimate of R/W capital costs derived from the PIDs. This Mitigation Needs and Cost Estimate must be realistic and accurate enough to sufficiently budget funds for pre-project funding and proposed mitigation-only projects identified by District ENV and R/W Division Chiefs as candidates for approval in the next budget year.

R/W capital costs that are potentially eligible for mitigation include:

- Capital and Support Costs for Purchase of Mitigation Bank Credits;
- Capital and Support Costs for Purchase and Holding of Properties;
- Capital and Support Costs for Conservation Easements;
- Capital and Support Costs for Purchase Options and Stewardship (Endowment) Funds;
- Capital and Support Costs for Purchase and Improvement of Lands for Mitigation-Only Projects, where a separate ED and/or Banking Agreement apply.

District R/W staff will establish and maintain the PMCS screens appropriately to include the use of Category “M.” This category identifier will be used to flag projects that require R/W capital for mitigation. At the request of the Project Manager, District R/W staff will prepare a standard R/W data sheet for mitigation-only projects. Capital outlay support costs necessary to implement planned early mitigation acquisition must be included in annual work plan estimates in order to receive resources to do the job.

Prior to March 31<sup>st</sup> of each year, the completed MNS with pre-project funding and identified mitigation-only projects will be submitted to the Headquarters Division of ENV and R/W. This will be used for the development of the mitigation-only portion of the annual R/W capital allocation line item, initial pre-project funding and mitigation-only justification reviews. Once the annual R/W capital allocation and/or fund reserves have been approved by CTC, the District ENV Division Chief may then submit a request and justification to Headquarters ENV and R/W Division Chiefs for review and approval of early mitigation on specific and mitigation-only projects that are identified in the MNS submittal.

Approvals will be on a case-by-case basis, subject to the strength of the justification and available funding. Factors considered will include:

1. Satisfaction of MNS needs (e.g., 75 percent of a particular resource);
2. Strength of resource agency agreements, permits, and support;
3. Benefit of mitigation and advancing related transportation projects;
4. Strategic opportunities and partnerships;
5. Strength of community support and context sensitivity;
6. Savings and efficiencies;
7. Compliance with all environmental laws, regulations, and policies;
8. Availability of ED approval;
9. Preservation of project alternatives;
10. Revocable commitment of resources, if needed;
11. Willingness of the seller.

Projects where pre-project funding has been reviewed and approved, funding to mitigate effects of a specific transportation project will follow the standard acquisition processes. The project EA and establishment of specific object codes for mitigation will capture costs. The total R/W capital and support costs will be reconciled and county shares adjusted for at the time funds are requested for the project, to combine both pre and post PA&ED expenditures.

Mitigation-only projects reviewed and recommended for funding will be submitted to Programming to request funding authority from the limited reserves of SHOPP, IIP, or RIP funds. The funding for planned but not yet programmed projects and the use of RIP funds requires additional coordination and approvals of transportation partners.

If mitigation-only funding is available, the project will be assigned a multi-phase Expenditure Authorization (EA) by District Project Management/Project Control and entered into PMCS. The project may then be submitted to the Headquarters Federal-Aid Resource Engineer for participation in the “advanced construction project.” Prior to proceeding with R/W activities, District ENV staff will ensure environmental compliance and completion of the appropriate ED as needed for the mitigation project. The mitigation-only EA and establishment of specific object codes for mitigation will capture costs. The mitigation costs will then be transferred to the transportation projects requiring the mitigation through prior year adjustments as the specific transportation projects complete their own ED and agreements. The total R/W capital and support costs for that specific transportation project will be reconciled and county shares adjusted for at the time funds are requested for the project, to combine both pre and post PA&ED expenditures.

## ISSUE MEMORANDUM

**TO:** BRENT FELKER  
Chief Engineer

**FROM:** BRICE D. PARIS  
Chief  
Division of Right of Way

**PREPARED BY:** BIMLA G. RHINEHART, Chief  
Office of Planning and Management and Systems  
Phone: (916) 654-2450

**DATE:** October 18, 2002

**SUBJECT:** Funding Pre-Project Mitigation Cost

<u>For Use by Department</u>	<u>For Use by Agency</u>
<input checked="" type="checkbox"/> Request for Approval	<input type="checkbox"/> Reply Directly to Correspondent
<input type="checkbox"/> Request for Discussion	<input type="checkbox"/> Prepare Letter/Memo for Director's Signature
<input type="checkbox"/> For Secretary's Information	<input type="checkbox"/> Prepare Letter/Memo for Agency Secretary's Signature
<input type="checkbox"/> For Secretary's Signature	<input type="checkbox"/> Prepare Letter/Memo for Agency Staff Director's Signature
<input type="checkbox"/> Responding to Agency Request	<input type="checkbox"/> Prepare Letter/Memo for Agency Deputy/Assistant Secretary's Signature

**AGENCY REFERENCE NUMBER:**

**TIME FACTOR:**

Failure to meet environmental obligations and project-specific regulatory requirements in a timely manner results in project delays, increased costs (construction penalties and economic loss), greater regulatory scrutiny of future projects, and assessment of greater mitigation ratios resulting in higher costs.

The approaches and options presented in this paper would take an estimated three to six months of project planning and estimate activities in coordination with Region/District staff to implement. Some options would require additional coordination with the Federal Highway Administration (FHWA), the California Transportation Commission (CTC) and staff, resulting in a STIP amendment.

## SUMMARY:

In an ever more stringent environmental regulatory climate, Project Managers continuing project-delivery success, depends on having as many environmental mitigation options as possible. Unfortunately, Department mitigation practices continue to be reactive, and by and large, limited to project-specific parcel acquisitions.

The character and timing of future transportation initiatives articulated in Regional Transportation Plans provides the Department, together with its transportation partners, an opportunity to proactively investigate ways of creating mitigation "solutions." Mitigation management must evolve beyond its project-centered focus to include assessment of future needs and opportunities consistent with the expressed goals of our regional transportation partners. The Final Report of the Mitigation Process Improvement Team recommended adopting a mitigation management approach linking projects and regional/statewide planning to provide a comprehensive framework within which the Department may explore solutions that maximize environmental returns, while minimizing capital investment -- a stewardship approach.

Efficiently fulfilling the transportation mandates established in the STIP and SHOPP requires that the Department clearly identifies adverse environmental implications inherent in future projects and articulates solutions as early as practical. Currently, the Department does not usually acquire environmental mitigation land or "credits" until Project Approval and Environmental Document (PA&ED). Early identification of environmental issues allows the Department and its regional partner's time to investigate "creative" ways to expand the "menu" of mitigation options (e.g., parcel assemblage, land banks) that may not be available later in the development process.

This paper presents two approaches to addressing pre-project mitigation and associated costs on a programmatic or project basis, to improve project delivery through advanced project mitigation planning and funding mechanisms:

### APPROACH 1: PROGRAMMATIC MITIGATION, VIA A "MITIGATION PROJECT"

In utilizing this approach, the Department would, as a separate "Mitigation Project" purchase, or develop environmental resources (mitigation credits) sufficient to offset future needs identified by each Region/District through an advanced project mitigation planning process. A mitigation project could be funded up-front through the use of either State or Federal funds, as follows:

#### Funding Alternate "A" -- Up-front State-only Funds

This alternative would provide an annual lump sum allocation to R/W for implementation of mitigation projects to be reimbursed from future STIP and SHOPP projects as need is identified through approved PA&ED. When the project achieves PA&ED, a user project would purchase or be charged for any required mitigation, that would be satisfied by all or a portion of the "Mitigation



Project." The amount to be charged to each user project will be in direct proportion to required mitigation and the cost of the "Mitigation Project." This mitigation share will be paid from R/W capital funds and will therefore reduce the amount of Right of Way capital funds remaining for the user project. It is therefore imperative that the original R/W estimates and programming for the user project include a sufficient amount for required mitigation, in addition to normal R/W requirements. The total amount of R/W capital funds available, including mitigation, for the user project is capped by the programmed amount. Additional funds from TEA21 enhancement projects, resource agency grant, or other matching funds would be used to leverage environmental benefit and reduce the risk of unused mitigation credit. This Alternate "A" would provide for federal reimbursement as appropriate, only on a project by project basis, and only when that project comes on line and if federal reimbursement is requested for the R/W approach.

#### Funding Alternate "B" -- Federal Funds

This alternative would provide the same results as Alternate "A"; however, the Department would seek prior federal approval for a "stand alone mitigation project." Upon approval of FHWA, the Department would proceed with the project, purchase and/or development of environmental resources (mitigation credits) as described above. However, the Department would be able to immediately seek federal reimbursement, upon completion and not have to wait for project by project reimbursement as they came online.

#### **Methods of achieving pre-project mitigation:**

- Purchase existing natural sites
- Purchase mitigation credits at a site
- Request For Proposal -- for purchase or "mitigation credits" which will require the purchase and private development of sufficient land acceptable to the resource agencies as providing the identified mitigation credit.
- State Purchases Land -- (RFP) for development or necessary mitigation acceptable to resource agency

#### APPROACH 2: ADVANCING THE R/W CAPITAL APPROACH OF PROGRAMMING RELATED TO ENVIRONMENTAL PRIOR TO PA&ED

The R/W approach related to environmental will be programmed concurrent with programming PA&ED. The non-environmental related to R/W portion will be programmed after PA&ED is achieved.

This approach would provide a "combined project" funding flexibility to the Department, for implementation of mitigation projects, which would be available upon estimating or anticipated environmental impacts and quantify them to the anticipated project mitigation, prior to PA&ED. Additional funds from TEA21 enhancement projects,

resource agency grant, or other fund matching would be used to leverage environmental benefit and provide for funding above and beyond required mitigation for the project.

District needs assessments would be developed for either approach through use of the new standard preliminary environmental analysis reports to quantify the type, amount, and schedule for mitigation needs. An annual roll-up of these estimates would provide regional and Statewide planning coordination to optimize solutions. Each District could then pursue mitigation specific projects in a scheduled work plan to provide offset credits in a timely manner at a lower cost, and with higher environmental values. An early mitigation approach would better preserve fragile or scarce habitat and create regional partnerships with private, quasi-public or public agencies to "catalyze" creation conservation land banks, yet facilitate project delivery.

It is however important to note that in all cases it would be the desire of the Department to not own and maintain these mitigation sites. Every effort should be made to immediately transfer ownership into an appropriate conservatorship or to actually acquire in their name, providing of course that credit for mitigation can be guaranteed.

Summarized Approaches:

***Approach 1***  
**Revised Annual R/W Fund Allocation**

- A. This approach would provide an annual lump sum allocation to R/W for implementation of mitigation projects to be reimbursed from STIP and SHOPP projects. When the project achieves PA&ED, the R/W component of the estimate will be reduced proportionally to the amount it used from the allocation.
- B. Program reimbursable TEA projects to cover mitigation needs that are not anticipated to be programmed in the immediate future.

***Approach 2***  
**Increased Programming Flexibility**

- A. The R/W approach related to environmental will be programmed concurrently with programming PA&ED. The non-environmental related R/W portion will be programmed after PA&ED is achieved.

**DISCUSSION/PRO-CON ARGUMENTS:**

The two approaches proposed are not exclusive and could be implemented on independent timelines. They are presented in tandem to contrast the relative level of efforts and proportional benefit gains.

#### Approach 1:

Approach 1 provides the greatest potential capital saving, the maximum environmental benefit clearest cost disclosure, and lowest administrative costs. This option would require more up front effort and coordination to implement but would create a more efficient and effective mechanism to meet the Department's stewardship goals.

#### Approach 2:

Approach 2 offers less flexibility, less project lead-time and higher administrative costs compared to Approach 1 but would be a potential improvement in comparison to current procedures. This option has the advantage of less coordination to implement and fewer funding approvals because it is project specific. However, the main disadvantage is that it would be less able to accommodate anticipated needs based upon changing regulation.

#### **EFFECT ON EXISTING LAW:**

Not applicable.

Note: Approach 1 would require procedural adjustments and concurrence from the California Transportation Commission, while Approach 2 would primarily be a Department adjustment, with Federal Highway Administration coordination.

#### **ESTIMATED COST:**

Exact estimates are not available, but long term capital and capital support costs would be lower due to (a) combined purchase power, (b) reduced cost escalation, (c) fund management, (d) early Federal reimbursement, and (e) the flexibility to utilize cost saving opportunities.

#### **RECOMMENDATION:**

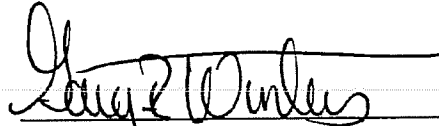
Both approaches 1 & 2 provide the greatest potential capital saving, maximum environmental benefit clearest cost disclosure, and the lowest administrative costs. While both approaches would require more upfront effort and coordination to implement, it would create a more efficient and effective mechanism to meet the Department's stewardship goals.

**SUBJECT: Funding Pre-Project Mitigation Cost**

**RECOMMEND FOR APPROVAL:**

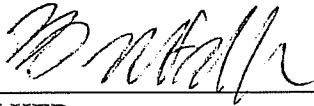


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10-24-02

Date